



THE COMMONWEALTH OF MASSACHUSETTS
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February 17, 2006

Ms. Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, Massachusetts 02110

RE: Massachusetts Electric Company and Nantucket Electric Company, D.T.E. 06-5

Dear Secretary Cottrell:

Enclosed please find the Attorney General's Initial Brief for filing in the above matter.
Thank you.

Sincerely,

/s/

Colleen McConnell
Assistant Attorney General

enclosure

cc: John J. Geary, Hearing Officer
Thomas Robinson, Esq., National Grid
Amy Rabinowitz, Esq., National Grid

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Massachusetts Electric Company)	
and Nantucket Electric Company)	D.T.E. 06-5
)	

/s/ _____
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**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Massachusetts Electric Company and)	D.T.E. 06-5
Nantucket Electric Company, d/b/a)	
National Grid)	
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INITIAL BRIEF OF THE ATTORNEY GENERAL

I. INTRODUCTION

On January 27, 2006, the Massachusetts Electric Company and Nantucket Electric Company, d/b/a National Grid, (together, the “Company” or “MECo”) filed a rate reconciliation and adjustment filing for Department of Telecommunications and Energy (“the Department”) approval. The Company proposes to increase its distribution rates on average to 2.645 cents per kWh, to become effective March 1, 2006. Exhibit MEC-2, SMM-1. *See Massachusetts Electric Company/Eastern Edison Company*, D.T.E. 99-47 (2000). On January 31, 2006, the Attorney General intervened as of right pursuant to G.L. c. 12, § 11E, and commenced filing discovery.

On February 14, 2006, the Department held a public hearing and an evidentiary hearing. The Company presented two witnesses to testify in support of its proposal, Theresa M. Burns, Manager of Distribution Rates for National Grid USA Service Company, Inc. (“National Grid”), and Scott M. McCabe, Senior Analyst, Distribution Regulatory Services for National Grid. The Attorney General submitted prefiled testimony of his witness, Lee Smith, who also testified at the evidentiary hearing.

II. THE RATE PLAN SETTLEMENT

The Company has requested approval of a distribution rate increase of 4.05%¹ pursuant to the Company's rate plan settlement² ("Rate Plan Settlement" or "Settlement") approved by the Department in the New England Electric System/Eastern Utilities Associates merger docket, D.T.E. 99-47. *Massachusetts Electric Company/Eastern Edison Company*, D.T.E. 99-47 (2000). The Company claims that the proposed increase results from the methodology in the Rate Settlement Plan that provides the form for determining the Company's annual rate adjustment. Exh. MEC-2 at 55; Rate Plan Settlement, D.T.E. 99-74, vol. 2, Attachment 9.

The relevant provisions of the Rate Plan Settlement include a Rate Index Period from March 1, 2005 through December 31, 2009. During this period, the Company adjusts its distribution rates by an index calculation specified in detail in the Settlement. Rate Plan Settlement, Attachment 9, Methodology to Adjust Distribution Rates. According to the Settlement's Methodology, the ratio of the Company's composite distribution rate³ to a Regional Index is determined. The ratio referred to as "MECo's Relative Position to the Index" is fixed

¹ As part of its proposal, the Company included its proposed annual reconciliation filing. The Hearing Officer bifurcated the proposed rate adjustment and the proposed annual reconciliation in his February 9, 2006 Memorandum in setting the evidentiary hearing to address only issues pertaining to the proposed rate adjustment. The Attorney General, therefore, addresses only the proposed rate adjustment in this brief.

² The parties to the Rate Plan Settlement are the Company, the Attorney General, the Division of Energy Resources, the Energy Consortium and Associated Industries. *Massachusetts Electric Company/Eastern Edison Company*, D.T.E. 99-47.

³ The composite distribution rate is the weighted average rate, expressed in cents per kilowatt hour. The composite rate is based on distribution charges for average monthly use for customers in rate classes equivalent to MECo's R-1, G-1, G-2 and G-3 (residential, small, medium and large C&I classes).

based on unbundled distribution rates⁴ in effect on July 1, 2004 for investor owned electric utilities located within New England, New York, New Jersey and Pennsylvania. Rate Plan Settlement, Section I.C.3.a. and Attachment 8. If companies enter or leave the Regional Index after the Initial Calibration, the Settlement provides for normalizing the relative position. Rate Plan Settlement, Attachment 8.

III. STANDARD OF REVIEW

In reviewing the “propriety” of rate increase proposals by a utility company under G. L. c. 164, § 94, the Department must determine whether the proposed rates are just and reasonable. *Attorney General v. Department of Telecommunications and Energy*, 438 Mass 256, 264 n. 13 (2002); *Berkshire Gas Company*, D.P.U. 96-67, p. 6 (1996). “The burden of proving the propriety of a rate increase remains with the utility seeking the increase.” *Town of Hingham v. Department of Telecommunications and Energy*, 433 Mass. 198, 213-14 (2001) citing *Metropolitan District Commission v. Department of Public Utilities*, 352 Mass. 18, 24 (1967); *Wannacomet Water Co. v. Department of Public Utilities*, 346 Mass. 453, 463 (1963). The Company bears the burden of proving each and every element of its case by a preponderance of “such evidence as a reasonable mind might accept as adequate to support a conclusion.” G. L. c. 30A, §1(6); *Fitchburg Gas and Electric Light Company*, D.T.E. 99-118, p. 7, n.5 (2001). If the Company fails to carry this burden, the Department must deny the Company’s requested rate treatment for the proposed adjustment. *Fitchburg Gas & Electric Light Company. v. Department of Public Utilities*, 375 Mass. 571, 582-583 (1978).

⁴ Unbundled distribution rates are rates that are designed to recover only the utility’s local distribution costs. These rates do not recover transmission or generation power costs.

IV. ARGUMENT

The Company's proposal does not comply with the provisions of the Rate Plan Settlement or its methodology for determining the Company's annual rate adjustment, so is, therefore, not just and reasonable. The Company has failed to calculate the distribution rate increase consistent with the clear terms of the Rate Plan by including a company, Consolidated Edison ("ConEd"), that does not have unbundled distribution rates. Rather than remove ConEd from the rate calculation as required by the approved settlement, MECo instead "creates" a 2005 unbundled distribution rate for this company. Although qualified for inclusion in the Regional Index on July 1, 2004, ConEd rebundled its transmission and distribution rates prior to July 1, 2005, the date the Index was recalculated to determine MECo's distribution rate adjustment for effect March 1, 2006. The Settlement is clear that only unbundled investor owned electric utilities in specific states are to be included in the Regional Index. Rate Plan Settlement, Section I.C.3.a. and Attachment 8. The Company's artificial distribution rate for ConEd should be eliminated from the Index and the Company's Relative Position, as permitted under the terms of the Settlement, should be normalized appropriately. Rate Settlement Plan, Attachment 9.

A. The Terms of the Rate Plan Settlement Do Not Allow the Company to Include Con Ed in the Regional Index.

The Rate Plan Settlement provides for annual adjustments to the Company's distribution rates. The Settlement specifies the Methodology for computing the percentage adjustment. Rate Plan Settlement, Section I.C.3.b and Attachment 9. The Company's proposal does not conform to the Rate Plan Settlement because it not only includes a bundled utility in the Regional Index but also creates a fictional unbundled distribution rate for ConEd. The Company creates the

fictional rate by taking ConEd's 2004 unbundled transmission and distribution rate elements and computing the ratio of each distribution rate element to the combined transmission and distribution rate elements. Exh. MEC-2, SMM-5. MECo applies this 2004 ratio to ConEd's 2005 bundled transmission and distribution rate elements.

The Settlement is clear—in the five principles for calculating the Regional Index, principle number four states:

A Regional Utility included in the Regional Index will be an investor-owned electric utility in the six New England states, New York, New Jersey or Pennsylvania with tariffs containing distribution rates and charges that reflect an array of unbundled distribution services comparable to the unbundled distribution services collected through the electric distribution rates of electric companies in Massachusetts.

Rate Plan Settlement, Attachment 8. Any attempt by the Company to include a bundled rate utility in the Regional Index is a violation of the plain terms of the settlement.⁵ The Department should reject the Company's proposal to include ConEd in the 2005 Rate Index and require the Company to recalculate the rate adjustment.

B. The Company's Artificial "Normalization" of Con Ed's Distribution Rates is Not Allowed Under the Rate Settlement Plan.

The Settlement requires the Initial Calibration of the Regional Index in 2004 to fix the Company's relative position to the Index. One of the key terms in the Settlement regarding the Rate Index Period is that MECo's initial distribution rates were to be below the Regional Index, and, if the Company's rate were higher than 90% of the Regional Index, the Company's relative position would be fixed at 90%. Rate Plan Settlement, Section I.3.C.a, n 6 and Attachment 8.

⁵ The Company agrees that the Rate Plan Settlement allows only unbundled investor-owned electric utilities be included in the Regional Index. Tr. at 17.

The Initial Calibration and the fixing of the Company's relative position is the starting point for calculating the Company's annual distribution rate adjustment. The mechanics of the prescribed Methodology begin with the Company's relative position to the Index and then multiply that percentage (line 1 of the Methodology form) by the Index value (line 2 of the Methodology form) to calculate the composite distribution rate for MECo (line 3 of the form). Rate Plan Settlement, Attachment 9. That calculated composite rate is compared to the Company's current composite rate (line 4) and, based on the change in the composite rate (line 5), an adjustment percentage increase or decrease is determined (line 6 of the form). *Id.* According to the Methodology, that positive or negative percentage is then used to adjust the Company's current distribution rate elements for all classes and produce rates for effect March 1. *Id.*

The Settlement allows for normalization of the Company's relative position (line 1 of the form) when, after the Initial Calibration in 2004, there is a new entrant or an elimination of a company from the Regional Index, such as ConEd in 2005. Rate Plan Settlement, Attachment 9, Line 1, Mass. Electric's Percentage of the Regional Index Determined as of July 2004, Normalized for New Entrants into the Index⁶ (emphasis added).

ConEd cannot be included in the Regional Index for 2005. The Attorney General's witness, Ms. Smith, discussed that the most appropriate way for the Company to normalize its relative position when adding or excluding a company to or from the Index is to look at two years of data without that company. Tr. at 47. The Company apparently agrees with this two year

⁶ Although not explicitly stated in the Methodology, the normalization concept also applies when a company is eliminated from the Regional Index as discussed in Attachment 8, p.1. Tr. at 44-45.

basis of normalizing for new entries and eliminations since the Company is using this method for the new entrant to the Index in 2005, Public Service of New Hampshire ("PSNH"). Exh. MEC-2 at 61-62. Ms. Smith has presented the appropriate calculation for the 2006 distribution rate adjustment according to the terms of the settlement and the Department should require the Company to refile its tariffs in compliance with this calculation. The appropriate calculation would result in the reduction of the Company's proposed distribution Indexed rate increase from 4.05% to 3.5%.

V. CONCLUSION

For these reasons, the Attorney General requests that the Department reject the Company's proposed distribution rate increase and order the Company to recalculate the rate adjustment without Con Ed in the Regional Index for the years 2004 and 2005.

Respectfully submitted,
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Dated: February 17, 2006